



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES
ATTORNEY GENERAL

DIVISION OF STATE COUNSEL
LITIGATION BUREAU

Writer's Direct Dial: (212) 416-8633

November 1, 2019

By ECF

The Honorable Jesse M. Furman
United States District Court
Southern District of New York
40 Foley Square, Courtroom 1105
New York, New York 10007

Re: *Hewes v. Alabama Secretary of State et al.*, No. 19-cv-9158 (JMF)

Your Honor:

I write on behalf of defendant the New York State Department of State ("NYS DOS") to respectfully request that NYS DOS have until December 5, 2019, to respond to the Complaint dated October 3, 2019 [[Dkt. 2](#)]. This is the first such request and I have attempted to obtain the consent of Plaintiff *pro se*, but did not get a response in time to file this letter.

The docket in this matter reflects that an answer from NYS DOS is currently due by November 5, 2019. [[See Dkt. 4](#)] To date, however, Plaintiff has not properly served NYS DOS. As an agency of the State of New York, personal service on NYS DOS must be accomplished by either: (1) delivery of the summons and complaint to a specifically designated agent of NYS DOS; or (2) receipt by the NYS DOS of the summons and complaint as sent by certified mail, return receipt requested, to the NYS DOS in an envelope bearing the legend "URGENT LEGAL MAIL" and delivery of the summons and complaint to the New York State Office of the Attorney General ("NYS OAG"). N.Y. C.P.L.R. 307(2); *see* [Fed. R. Civ. P. 4\(j\)\(2\)](#).

The purported Certificate of Service dated October 23, 2019 [[Dkt. 4](#)], only indicates that the summons and complaint were sent to the NYS DOS via certified mail. As of this writing, the NYS DOS does not have a record of receipt of the summons and complaint and the NYS OAG has no record of delivery of the summons and complaint. Thus, NYS DOS had not yet been properly served and its obligation to answer the complaint has not yet attached. *See* N.Y. C.P.L.R. 307(2); [Fed. R. Civ. P. 4\(j\)\(2\)](#). Given that an answer deadline of November 5, 2019, has been established based on the purported Certificate of Service, the NYS DOS respectfully requests that it have until December 5, 2019, to move to dismiss the complaint on a variety of grounds, including lack of proper service and lack of personal jurisdiction.

Thank you for your attention to this request.

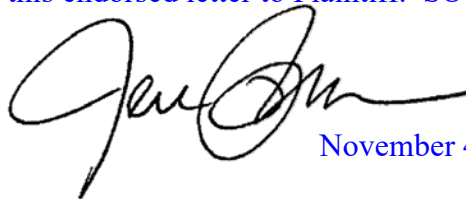
Respectfully submitted,

/s

Roderick L. Arz
Assistant Attorney General
Attorney for NYS DOS

Cc: (by first-class mail)
Henry F. Hewes
515 Madison Avenue
Suite 22B
New York, NY 10022
Plaintiff Pro Se

Application GRANTED. NYS DOS's deadline to answer or move to dismiss is hereby EXTENDED to December 5, 2019. The Clerk of Court is directed to terminate ECF No. 9 and to mail a copy of this endorsed letter to Plaintiff. SO ORDERED.

A handwritten signature in black ink, appearing to be "J. M. [unclear]", is written over the date.

November 4, 2019